



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2019–0091; FXES11140100000–212–FF01E00000]

Record of Decision for the Final Environmental Impact Statement for the Deschutes Basin Habitat Conservation Plan, Klamath, Deschutes, Jefferson, Crook, Wasco, and Sherman Counties, Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; record of decision and habitat conservation plan.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a record of decision (ROD) for the proposed issuance of an Endangered Species Act (ESA) permit for the Deschutes Basin Habitat Conservation Plan (HCP). The ROD documents the Service’s decision to issue an incidental take permit (ITP) to the Deschutes Basin Board of Control (DBBC)’s eight-member irrigation districts, and the City of Prineville (applicants). As summarized in the ROD, the Service has selected Alternative 2 – the Proposed Action, which includes implementation of the HCP and issuance of a 30-year ITP authorizing take of two threatened species listed under the ESA that may occur incidental to covered activities in the plan area over the permit term.

ADDRESSES: You may obtain copies of the ROD and other documents associated with the decision by the following methods.

- *Internet:* <http://www.regulations.gov> under Docket No. FWS–R1–ES–2019–0091, or at <https://www.fws.gov/Oregonfwo/articles.cfm?id=149489716>.
- *Upon Request:* You may request alternative formats of the documents directly from the Service (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Bridget Moran, by telephone at 541–383–7146, or by email at bridget_moran@fws.gov. Hearing or speech impaired individuals may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a record of decision (ROD) for the proposed issuance of an Endangered Species Act (ESA) section 10(a)(1)(B) incidental take permit (ITP) to the Deschutes Basin Board of Control (DBBC) member districts (Arnold, Central Oregon, Lone Pine, North Unit, Ochoco, Swalley, Three Sisters, and Tumalo Irrigation Districts) and the City of Prineville (collectively referred to as the applicants) in Klamath, Deschutes, Jefferson, Crook, Wasco, and Sherman Counties, Oregon. The ROD documents the Service’s decision to issue an ITP to the applicants. As summarized in the ROD, the Service has selected Alternative 2, the Proposed Action (described below), which includes implementation of a Habitat Conservation Plan (HCP) and issuance of the ITP authorizing incidental take of the federally threatened Oregon spotted frog (*Rana pretiosa*) and the threatened bull trout (*Salvelinus confluentus*) over a 30-year period. The applicants have also requested a separate ITP covering take of the federally threatened Middle Columbia River steelhead trout (*Oncorhynchus mykiss*) and the non-listed sockeye salmon (*O. nerka*) from the National Marine Fisheries Service (NMFS).

The Service and NMFS (jointly, the Services) make independent decisions regarding coverage for incidental take of the species under their respective jurisdictions. NMFS's decision is not addressed in the Service's ROD.

We are advising the public of the availability of the ROD, developed in compliance with agency decision-making requirements of the National Environmental Policy Act of 1969, as amended (NEPA), and the final HCP as submitted by the applicants. The Service published a notice of availability (NOA) of the Draft EIS in the Federal Register on October 4, 2019 (84 FR 53164), and jointly published a NOA of the Final EIS with NMFS on November 6, 2020 (85 FR 71086). All alternatives were described in detail, evaluated, and analyzed in the Draft and Final EIS. As the EIS was developed prior to the September 14, 2020, effective date for the Council on Environmental Quality's updated NEPA regulations, the Final EIS and ROD were completed consistent with the previous regulations (40 CFR 1506.13).

Background

All eight water districts are quasi-municipal corporations formed and operated according to Oregon State law to distribute water to irrigators (patrons) within designated geographic boundaries and in accordance with the individual water rights held by those patrons. The City of Prineville operates City-owned infrastructure and provides essential services—including public safety, municipal water supply, and sewage treatment—for more than 9,000 residents. The applicants have determined that continued operation of irrigation and essential services (covered activities) requires ITPs to address unavoidable incidental take of species listed under the ESA (covered species), which is ongoing.

The applicants have proposed a conservation program to avoid, minimize, and mitigate the impacts of taking of the covered species. The HCP addresses the adverse effects of the covered activities on the covered species by reducing or eliminating those

effects to the maximum extent practicable, and by mitigating effects that cannot be eliminated altogether. In general, adverse effects on listed species can result from direct harm or injury of individuals of the species, and through changes in habitat that interfere with the essential life activities of the species. Both types of effects are addressed in the HCP conservation measures. The covered activities affect the covered species primarily through changes in the hydrology (flow) of occupied waters associated with the storage, release, diversion, and return of irrigation water.

In the course of storing, releasing, diverting, and returning irrigation water, the applicants alter the hydrology of the Deschutes River and a number of its tributaries. In a similar fashion, the pumping of groundwater for municipal water supply by the City of Prineville affects the hydrology in one of those tributaries, the Crooked River. In most cases, the hydrologic changes resulting from activities covered by the HCP have adverse impacts on aquatic habitats for the covered species. When flows are reduced, the total area of usable habitat for aquatic species generally decreases and water temperatures typically increase to the extent that habitat quality is negatively impacted. The HCP conservation measures will modify irrigation activities that reduce in-stream flow (storage and diversion of water) to address the adverse effects described above. As a result, with implementation of the HCP, flows in the affected reaches will be higher than they were historically (over the last 50+ years) in the winter, and provide improved habitat quality for the covered species.

Purpose and Need

As described in the Final EIS, the Service's purpose for the Federal action is to fulfill our section 10(a)(1)(B) conservation authorities and obligations. The need for our action is to respond to the ITP application submitted by the applicants requesting take of the Oregon spotted frog and bull trout, the two species under the Service's jurisdiction.

Alternatives

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), the Service prepared a Final EIS analyzing the proposed action (Alternative 2, identified as the preferred alternative), a no-action alternative, and two additional alternatives to the proposed action; summaries of each alternative are presented below. The Final EIS analyzed both the Service's proposed issuance of an ITP and NMFS's proposed issuance of an ITP. The environmental consequences of each alternative were analyzed to determine if significant impacts to the human environment would occur. Public comments received in response to the Draft EIS were considered, and the Final EIS reflected clarifications of the existing analysis to address public comments. The Final EIS did not identify an environmentally preferable alternative. Pursuant to NEPA implementing regulations found at 40 CFR 1505.2, the Service identified Alternative 3 (Enhanced Variable Streamflows) as the environmentally preferable alternative in the ROD.

Alternative 1 - No-action Alternative: No ITPs would be issued, and the applicants' HCP would not be implemented. Under Alternative 1, ongoing applicant activities would remain subject to the take prohibition for listed species under section 9 of the ESA. This alternative assumes continuation of actions covered in an ESA section 7 biological opinion issued to the Bureau of Reclamation addressing the effects of water management activities in the Upper Deschutes River Basin to the Oregon spotted frog, and continuation of actions covered in other ESA section 7 consultation documents addressing the effects of Deschutes River Basin projects to the Middle Columbia River steelhead trout and the bull trout.

Alternative 2 - Proposed Action, Deschutes Basin HCP: Under this alternative, identified as the preferred alternative in the Final EIS, the Service would issue a 30-year ITP to the applicants for incidental take of the two covered species under its jurisdiction,

NMFS would issue a separate ITP for incidental take of the two covered species under its jurisdiction, and the applicants would implement the HCP. Over the 30-year period of HCP implementation, in-stream flows would be modified to mimic more natural flow patterns to support the various life stages of the covered species. The HCP also includes the establishment of conservation funds to support habitat restoration and enhancement projects, as well as additional funding for in-stream water leasing programs.

Alternative 3 - Enhanced Variable Streamflows: Under this alternative, the Services would issue ITPs to the applicants for the same plan area, covered lands and waters, covered species, covered activities, and permit term as described for the proposed action, but with modifications to the HCP conservation strategy, including increased fall and winter flows in the Deschutes River below Wickiup Dam, and in-stream protection of uncontracted water releases on the Crooked River for fish and wildlife.

Alternative 4 - Accelerated Schedule for Enhanced Variable Streamflows: Under this alternative, the Services would issue ITPs to the applicants for the same plan area, covered lands and waters, covered species, and covered activities as described for the proposed action, but with a 20-year permit term and modifications to the HCP conservation strategy for an accelerated schedule for increases in fall and winter flows in the Deschutes River below Wickiup Dam, and in-stream protection of additional uncontracted water releases on the Crooked River for fish and wildlife.

Decision and Rationale for Decision

Based on our review of the alternatives and their environmental consequences as described in the Final EIS, we have selected the Proposed Action (Alternative 2). The Proposed Action includes the implementation of the final HCP and the Service's issuance of an ITP authorizing incidental take of the two covered species under the Service's jurisdiction for a 30-year permit term. Our assessment of the application was conducted

in accordance with the requirements of section 10(a)(1)(B) of the ESA and its implementing regulations. In order to issue an ITP for covered species under the ESA, we must determine that the HCP meets the issuance criteria set forth in 16 U.S.C. 1539(a)(2)(B). We have made the determination that the HCP meets this criteria, as described further in the ROD.

Authority

We provide this notice in accordance with the requirements of section 10(c) of the ESA (16 U.S.C. 1539(c)) and its implementing regulations (50 CFR 17.32), and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR Part 46).

Robyn Thorson,
Regional Director,
U.S. Fish and Wildlife Service.

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